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18 ATTORNEYS FOR PLAINTIFF

19 IN THE UNITED STATES DISTRICT COURT

20 FOR THE EASTERN DISTRICT OF WASHINGTON

21 EQUAL EMPLOYMENT
22 OPPORTUNITY COMMISSION,
23 Plaintiff,

24 and

25 ELODIA SANCHEZ,

Plaintiff-Intervenor,

vs.

EVANS FRUIT CO., INC.

Defendant,

and

CIVIL ACTION NO. 10-3033-LRS

PLAINTIFFS'
RESPONSE TO ORDER ON
MOTION FOR PROTECTIVE
ORDER-(BIFURCATION)

Plaintiffs' Response to Motion on Protective Order - 1

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JUAN MARIN and ANGELITA
MARIN, a marital community,

Defendant-Intervenors.

Plaintiff EEOC and Plaintiff-Intervenor Elodia Sanchez (jointly Plaintiffs)
respectfully submit this memorandum opposing bifurcation of this case.

The EEOC and Ms. Sanchez believe that the issue of bifurcation is now moot for the following reasons. This Court has noted that immigration status, although clearly irrelevant to a liability determination and clearly irrelevant to non-pecuniary losses, had potential relevance to a determination of certain actual pecuniary damages (*i.e.*, back pay) in the event the employer was found liable. (*See* Court Dkt. No. 266 pg. 3, lines 4-6; 20-22; fn. 1). On April 29, 2011 Ms. Sanchez filed a Response to the Motion for Protective Order in which she withdrew her back pay claim under WLAD and her Negligent Infliction of Emotional Distress claims based on her understanding that immigration status and medical information would not be relevant. (*See* Court Dkt. No. 270, pg. 2, lines 8-11). Therefore, in light of Plaintiff-Intervenor's withdrawal of these claims, and given that immigration status is not relevant as to liability or non-pecuniary damages, bifurcation is not necessary. Accordingly, neither is it necessary to bifurcate discovery, which should move forward on all issues at this point.

Plaintiffs' Response to Motion on Protective Order - 2

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1 Finally, and as stated previously in EEOC's Response to Evans Fruit's
2 Motion for Declaratory Rulings RE: Burden of Proof (Ct. Dkt. 234), the EEOC
3 filed this case pursuant to § 706 of Title VII of the Civil Rights Act of 1964, as
4 amended, and as such expects to prove the liability and damages claims of each
5 victim individually at one trial, before one jury. Consistent with the foregoing, the
6 EEOC does **not** seek to bifurcate the instant case into Stage I liability and Stage II
7 damages phases. A single jury should sit at trial because the alleged harassing
8 conduct, Defendant's failure to fulfill its legal obligations in responding to the
9 conduct, and the effect this had on each claimant are interrelated evidentiary
10 matters. Accordingly, one jury should evaluate evidence as to all liability claims
11 *and* all claims for non-pecuniary compensatory damages and punitive damages.
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Plaintiffs' Response to Motion on Protective Order - 3

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1 RESPECTFULLY SUBMITTED:

2 DATED this 10th day of May, 2011.

3
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15 BY: /s/ Carmen Flores
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20 NORTHWEST JUSTICE PROJECT

21 By: /s/ Blanca E. Rodriguez
22 Blanca E. Rodriguez, WSBA # 27745
23 Attorneys for Elodia Sanchez
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25

Plaintiffs' Response to Motion on Protective Order - 4

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CERTIFICATE OF SERVICE

I hereby certify that this 10th Day of May, 2011, I electronically filed the foregoing “PLAINTIFF EEOC’S RESPONSE TO MOTION FOR PROTECTIVE ORDER” with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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DATED this 10th day of May, 2011.

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